

IN THE MATTER OF APPLICATION FOR  
RESERVATION OF WATER NO. 9943-r42J  
BY THE POWDER RIVER CONSERVATION  
DISTRICT

The above-entitled matter came on regularly for hearing starting on or about September 8, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Gary Spaeth. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Fish and Game appeared by and through its counsel of record, F. Woodside Wright and Clayton Herron. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. Utah International, Inc. appeared by and through its counsel of record, Henry Loble. Witnesses were duly sworn, and oral and documentary evidence was introduced.

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### FINDINGS OF FACT

1. The Powder River Conservation District has applied for a water reservation for the year 2000 as follows:

- a) 75,560 acre-feet per year with a maximum diversionary flow rate of 583.2 cfs from the Powder River to irrigate 25,245 acres with full-service irrigation
- b) 6,180 acre-feet per year with a maximum diversionary flow rate of 206 cfs from the Powder River to irrigate 4,120 acres by means of waterspreading
- c) 7,500 acre-feet per year with a maximum diversionary flow rate of 500 cfs from Powder River tributaries to irrigate 5,000 acres by means of waterspreading (Powder River Conservation District, Application No. 9942-r43J, Table 1 and amended Table 1).

#### Findings Related to the Purpose of the Reservation (89-890(3)(a)).

2. The purpose of this reservation is to ensure that water will be available for the expected expansion of irrigation in Powder River County by the Powder River Conservation District (Powder River Conservation District, Application No. 9943-r42J, p. 4).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

#### Findings Related to the Need for the Reservation (89-890(3)(b)).

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began (Powder River Conservation District, Application No. 9943-r42J, p. 6).

5. A reservation of water is needed because there is competition for water in the Yellowstone Basin which may affect the ability of the Applicant to obtain a water right by permit in the future (Powder River Conservation District, Application No. 9943-r42J).

6. It is established to the satisfaction of the Board that the need for a reservation of water has been shown (Findings 4 and 5).

Findings Related to the Amount of Water Necessary for the Purpose of the Reservation  
(89-890(3)(c)).

7. The Powder River Conservation District has no established plan for providing the storage necessary for its proposed full-service irrigation.

8. It is unlikely that any future storage on the Powder River will provide a substantial quantity of water for irrigation (Tr. Vol. 32, pp. 17 and 18).

9. In the Powder River Subbasin, only irrigation by waterspreading could expand significantly unless inexpensive stored water were made available for irrigation (Draft EIS, Vol. II, p. 278).

10. It has not been established to the satisfaction of the Board that any amount of water should be reserved for full-service irrigation in Powder River County because no water is available or likely to be made available to satisfy the water needs of full-service irrigation (Findings 7 through 9).

11. Sufficient water is available in the Powder River Subbasin to irrigate the waterspreading projects in the subbasin (Powder River Conservation District, Application No. 9943-r42J, p. 15).

12. Of the 34,365 acres for which a reservation has been requested by the Powder River Conservation District, only 9,120 can be considered to have plans sufficient to merit a reservation because 25,245 acres can be developed only if storage is provided, and the Application contains no plans for such storage (Findings 1 and 7 through 11).

13. A figure of 1.5 acre-feet per acre of water is reasonable for waterspreading and is more than the amount required for waterspreading under good management (Addendum I of the Amended Application of Powder River Conservation District)

14. It is established to the satisfaction of the Board that the amount of water necessary for the purpose of the reservation of supplying 1.5 acre-feet per acre of water for 9,120 acres is 13,680 acre-feet per year.

Findings Related to the Public Interest (89-890(3)(d)).

15. From 1960 to 1970 the rural population in Powder River County declined 15.2 percent. A major reason was a lack of job opportunities (Draft EIS, Vol. I, p. 101).

16. New irrigation would increase income in Powder River County, both for the farmers who would install the systems and for the local businesses that would enjoy increased sales resulting from the increase in agricultural income. New irrigation would increase the number of both on-farm and off-farm jobs (Draft EIS, Vol. I, p. 156).

17. The Powder River Conservation District has an established plan for completion of the proposed facilities for which a reservation is granted that will put reserved water to use by the year 2000 (Powder River Conservation District, Application No. 9943-r42J).

18. A reservation sufficient to irrigate 9,120 acres is in the public interest because it is reasonable to expect that the Powder River Conservation District will irrigate an additional 9,120 acres by the year 2000.

19. It is established to the satisfaction of the Board that the reservation of 13,680 af/y to be used for waterspreading irrigation is in the public interest and that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan (Findings 15 through 18).

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorizes the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservations of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, the Powder River Conservation District, is a political subdivision of the State of Montana and as such is entitled to apply to reserve

waters within the State of Montana in accordance with Section 89-890, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in the review of this reservation Application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full Application appearing in said Findings, all pertinent criteria delineated at Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.